Editor's note: Clarification of decision by order dated Sept. 28, 1981 -- See 57 IBLA 84A & B below; Request for reconsideration of the Sept. 28, 1981, clarification order denied by order dated Oct. 21, 1981.

SIERRA CLUB ET AL.

IBLA 81-307 Decided August 21, 1981

Appeal from a decision of the Yuma District Manager, Bureau of Land Management, denying a protest of the issuance of a special recreation permit. Y-0367.

Affirmed.

1. Environmental Policy Act -- Environmental Quality: Environmental Statements -- National Environmental Policy Act of 1969: Environmental Statements

   Where an administrative decision is made that a proposed action is not a major Federal action which will significantly affect the quality of the human environment, so that no environmental impact statement need be filed, that decision will be affirmed on review if it appears to have been made by an authorized officer, in good faith, based upon a proper and sufficient environmental analysis record compiled in accordance with established procedures, and is the reasonable result of his study of such record.

APPEARANCES: Mark I. Weinberger, Esq., Michael Shapiro, Esq., San Francisco, California, for appellants; Laurens H. Silver, Esq., San Francisco, California, for Sierra Club.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Sierra Club, San Bernardino Valley Audubon Society, California Native Plant Society, and the California Desert Tortoise Council appeal from a decision of the Yuma District Manager, Bureau of Land Management (BLM), dated January 12, 1981, granting a special recreation permit to SCORE, International, et al. (SCORE). The permit at issue authorized SCORE to conduct the Parker 400 off-road vehicle race on February 7, 1981, over a route beginning in Yuma County, Arizona, and ending in San Bernardino County, California. Ten previous races have been run on

essentially the same route as contemplated by the permit. The race is 292.5 miles long and is run over a 199-mile course (the Arizona portion is run twice), 90 percent on roads and 10 percent through desert washes. Approximately 425 vehicles compete. 1/

Prior to the appeal of BLM's decision, appellants protested the issuance of the subject special recreation permit by a pleading filed with the Yuma District Office on January 29, 1981. The protest charged that issuance of a permit to SCORE was inconsistent with the California Desert Conservation Area (CDCA) Desert Plan and violated the wilderness provisions of the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. § 1782 (1976). In addition, the protest charged that BLM's Environmental Assessment Record (EAR) was inadequate to assess the impacts of the race on desert resources and to present feasible alternatives and means of mitigation.

By decision dated January 30, 1981, the Yuma District Manager denied appellants' protest. This appeal followed. The district manager's denial stated that the proposed race and alternatives thereto had been carefully analyzed in the EAR. The race was consistent, the district manager maintained, with CDCA plans and FLPMA's wilderness provisions. Because participants in the race were presently arriving at the race area and because participants, sponsors, merchants, and others had expended large sums of money in preparation for the race, the district manager asked this Board to hold that the decision denying appellants' protest be in full force and effect immediately.

On January 30, 1981, protestants filed an action in United States District Court for the Central District of California seeking a temporary restraining order to halt the race. California Native Plant Society v. Watt, No. CV 81-1489-CBM. On February 5, 1981, without opinion or findings, the court announced its decision not to grant the relief sought. In the meantime, this Board on February 4 ordered that the district manager's decision of January 30, 1981, be given full force and effect. Appellants' statement of reasons on appeal incorporates by reference a number of the arguments before the district court.

At the outset, appellants maintain that their appeal has not become moot by the fact that the Parker 400 has been run as planned. With this contention of appellants, we agree. The Parker 400 has been an annual event since 1972. Future races are likely to occur; indeed, appellants understand that an application for next year's event is presently before BLM. If the merits of this appeal are not addressed at this time and if BLM issues a permit for a 1982 race, we can foresee another series of last-minute maneuvers similar to those of the present year. For these reasons, we hold that the merits of the present

1/ Regulations governing the issuance of special recreation permits are found at 43 CFR Group 8300.

appeal are properly addressed at this time. 2/ Southern California Motorcycle Club, Inc., 42 IBLA 164 (1979).

The gist of appellants' arguments on appeal is the contention that an Environmental Impact Statement (EIS) should have been prepared by BLM prior to issuance of a permit to SCORE. Consistent with this contention is appellants' argument that the environmental assessment record compiled by BLM is inadequate to assess the impacts of the Parker 400. Under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. § 4332(2)(c) (1976), an EIS is required to be included "in every recommendation or report on proposals for legislation and other major federal actions significantly affecting the quality of the human environment." An environmental assessment is a concise public document that serves, inter alia, to "[b]riefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact." 40 CFR 1508.9(a)(1). BLM's EAR contained a finding that "the proposed action, with application of mitigating measures, will not have a significant impact on the human environment."

Appellants challenge this finding, contending that the EAR fails to address sufficiently a number of critical impacts with the level of analysis necessary to reach a negative finding. Specifically, appellants contend that the EAR fails to address the unique susceptibility of desert soils to vehicle damage and the possible extent of damage caused by the projected 12,800 spectators at the race. Given the fact that the racecourse traverses the Chemehuevi Valley, a habitat of the desert tortoise, appellants maintain that the EAR fails to consider evidence of adverse impacts to the tortoise population caused by off-course vehicles. The impacts on cultural and archaeological resources, including Native American sacred areas and prehistoric remains, receive inadequate discussion in the EAR, appellants argue, because of BLM's failure to address the problem of spectators at play. Furthermore, while BLM monitors, signs, and barriers may limit damage to fragile archaeological sites on the day of the race, individuals pre-running the course would not be similarly constrained. Finally, appellants argue that the EAR's discussion of vegetation, based on a 4-year old inventory, limited monitoring, and generalized plant descriptions, is inadequate to assess the impacts on vegetation. Appellants note that the EAR does not mention two rare cacti found in the racecourse area.

2/ Given the recurring nature of the Parker 400 and its opposition by environmental groups, however, we might suggest that any permit for a 1982 race be granted sufficiently in advance of the race day to allow to a protestant the full 30-day appeal period following service of the denial of a protest. See 43 CFR 4.411. To insure adequate review by this Board, permit issuance should be further accelerated. In the absence of significant changes in the racecourse or new information as to the environmental impacts of the Parker 400, our discussion above of the Parker 400 EAR will likely be persuasive in any future appeals based on similar arguments.

In addition, no discussion is offered as to the susceptibility of various plant communities to vehicle damage, especially occurring as a result of soil compaction and cumulative impacts.

The EAR at issue, a document of some 108 pages, details BLM's study of the environmental impacts caused by the Parker 400. Contrary to appellants' assertion, the EAR does contain an analysis of the effects of off-road vehicles on desert soils, whether caused by racing vehicles or spectator vehicles (EAR at 2-3 through 2-5, 3-2, 3-4). The EAR includes a summary of a report by a soil scientist who mapped 150 miles of the 199-mile course (EAR at 2-1 through 2-5). The extent of the impact of spectators on surface soils is reflected in Table 3 (EAR at 3-5). Although the desert tortoise is not on the Federal threatened or endangered list, the present BLM policy is not to allow actions which might jeopardize the existence of this creature (EAR at 2-11). BLM has the benefit of two surveys of tortoise populations and the results of a study plot in Chemehuevi Wash begun in 1977. Acknowledging that vehicles could collapse burrows occupied by hibernating tortoises, BLM notes that efforts towards keeping race vehicles on the course and spectators out of the wash area have been increasingly effective. Little race-related activity occurs off the established course in Chemehuevi Wash, except at spectator and checkpoint areas. Cumulative impacts from nine previous races have not resulted in marked declines in animal numbers or species diversity (EAR at 3-12). With respect to appellants' contention that the EAR does not adequately address the impacts on cultural and archaeological resources, we note that the EAR speaks of a Class III inventory conducted by BLM during the spring of 1980 to examine all areas where impacts to cultural resources could result from race-related vehicles or spectators (EAR at 2-16). BLM admits that spectator control has remained a problem, but finds that progress has been made with each succeeding race. Consultations with the State Historic Preservation Officers of Arizona and California have taken place; each officer has agreed that the protective measures proposed as mitigation, combined with existing safeguards, will eliminate adverse effects on cultural resources 3/ (EAR at 3-16). Adverse impacts to Native American values are described as "low" by BLM as a result of its efforts to identify and mitigate against such impacts (EAR at 3-16). Finally, appellants' charge that the EAR is inadequate to assess the impacts on vegetation appears to be contradicted by BLM's rather extensive reporting therein (EAR at 2-2, 2-6, 3-4, 3-7 through 3-9). Thirty-nine vegetation trend plots have been established to monitor changes in vegetation cover and composition caused by the Parker 400. The cumulative effects of annual races are addressed at pages xii, 3-7, B-1, and D-10.

[1] Our discussion above, while somewhat detailed, does not pretend to address every comment made by appellants about the EAR. Our review of the record does, however, convince us that BLM has made an

3/ We note that 46 stipulations have been attached to SCORE's permit in mitigation of anticipated race impacts.

extensive examination of the impacts of the Parker 400 on, inter alia, soils, wildlife, cultural and archaeological resources, and vegetation. The finding by the district manager that an EIS is unnecessary is consistent with this examination. In Maryland-National Capitol Park and Planning Comm. v. U.S. Postal Service, 487 F.2d 1029 (D.C. Cir. 1973), the Court ruled that an agency preparing an EAR containing a negative finding had to 1) take a "hard look" at the problem, as opposed to setting forth bald conclusions; 2) identify the relevant areas of environmental concern; and, 3) make a convincing case that environmental impact is insignificant. Accord, Fund for Animals v. Frizzell, 402 F. Supp. 35 (D.D.C. 1975), aff'd, 530 F.2d 982 (D.C. Cir. 1976). We find that BLM's analysis of the proposed action satisfies these criteria. Citizens' Committee to Save Our Public Lands, 29 IBLA 48 (1977), aff'd, Citizens' Committee to Save Our Public Lands v. Andrus, No. C-77-633 SC (N.D. Cal. 1977) (order denying preliminary injunction).

Appellants further challenge the EAR on the grounds that it does not address a reasonable range of alternatives. This challenge is based on 40 CFR 1508.9(b) stating that an environmental assessment shall include "brief discussions of the need for the proposal, of alternatives as required by sec. 102(2)(E), of environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted." (Emphasis supplied.) The EAR at issue examines five alternatives to the proposed action. They are: 1) no action (application denied); 2) a shorter race; 3) limiting vehicle size or classes; 4) specifying the number of race vehicles; and 5) reversing the direction of travel on the California loop. From this group, the EAR found alternatives 4 and 5 to be "preferred alternatives" to the proposed action.

Appellants' argument that BLM did not address a reasonable range of alternatives has been ably answered by BLM in the EAR:

> Alternatives were discussed which substantially meet the purpose and need of the proposed action. An almost infinite array of alternatives could be addressed which suggest course changes, an oval short course, various combinations of vehicle classes, etc. The alternatives addressed in the EA are reasonable and within the scope of the proposed action. Analyzing a large number of alternatives which would involve moving the proposed race off of previously existing roads which have been used for years without major environmental damage is not reasonable action. These alternatives would open previously undisturbed areas to activity currently confined to an established corridor of use. The respondents suggested alternatives which either "radically change the race's status quo" or "merely shift things around" are not felt to be reasonable alternatives. The current course had evolved out of consideration of alternative routes in

> early races which emphasized the most environmentally compatible route. It has been included in the Interim Critical Management Plan (ICMP) for a competitive event and further changes could create conflicts with the plan.

(EAR at D-3).

We find that BLM has addressed a reasonable range of alternatives to the proposed action and that the EAR is in accord with the requirements of 40 CFR 1508.9, quoted in part, supra, and the standards enunciated in Maryland-National Capitol Park and Planning Comm., supra. Where an administrative decision is made that a proposed action is not a major Federal action which will significantly affect the quality of the human environment, so that no environmental impact statement need be filed, that decision will be affirmed on review if it appears to have been made by an authorized officer, in good faith, based upon a proper and sufficient environmental analysis record compiled in accordance with established procedures, and is the reasonable result of his study of such record. James I. Thompson, 51 IBLA 154 (1980); Julie Adams, 45 IBLA 252 (1980); Citizens' Committee to Save Our Public Lands, supra. BLM's EAR provides ample support for such findings.

Appellants' objections to BLM's "scoping" of the issues is based on a misreading of the applicable regulations. "Scoping" is the process by which an agency determines the scope of the issues to be addressed in an environmental impact statement. Key to this process is the participation of affected Federal, state, and local agencies, the proponent of the action, and other interested persons not in accord with the proposed action. The obligation set forth in 40 CFR 1501.7 to establish a scoping process does not arise, however, until a decision is made to prepare an environmental impact statement. Appellants' argument to the contrary is unsupported by citation. There being a negative finding as to the need for an EIS, the obligations of 40 CFR 1501.7 do not pertain. See also 40 CFR 1501.4(b) through (d).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Yuma District Manager is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Bruce R. Harris
Administrative Judge

September 28, 1981

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IBLA 81-307	:	
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SIERRA CLUB, SAN BERNARDINO VALLEY AUDUBON SOCIETY, CALIFORNIA NATIVE PLANT SOCIETY, and CALIFORNIA DESERT TORTOISE COUNCIL	:	Petition for Reconsideration Clarification of Decision

ORDER

By decision of August 21, 1981, this Board affirmed a decision of the Yuma District Manager, Bureau of Land management (BLM), granting a special recreation permit to SCORE, International, et al., to conduct the Parker 400 off-road vehicle race. Sierra Club, 57 IBLA 79 (1981). Our decision followed a protest by the above-named appellants on January 29, 1981, and BLM's denial of this protest on January 30, 1981. In BLM's protest denial, the District Manager petitioned this Board to order that his decision granting a permit to SCORE be given full force and effect notwithstanding the appeal that had been filed by appellants.

Our order of February 4, 1981, granted the petition sought by the District Manager and further held the appellants' protest had been untimely filed with prejudicial effect to the interests of BLM and SCORE. In support thereof, we cited 43 CFR 4.450-2 for the proposition that a protest is properly filed prior to an action proposed to be taken. We noted also, however, that this Board has on occasion found it appropriate to review a protest filed after the conclusion of BLM action. Such review was conducted at the Board's discretion pursuant to the general review authority of the Secretary.

In a footnote to our subsequent decision, at 57 IBLA 81, we suggested that "any permit for a 1982 race be granted sufficiently in advance of the race day to allow to a protestant full 30-day appeal period following service of the denial of a protest." The Field Solicitor now petitions for reconsideration of this footnote language, maintaining that this language is seemingly inconsistent with our order of February 4. While we do not agree that these statements are necessarily inconsistent, we can appreciate the need for clarification.

In an annual event such as the Parker 400, a protestant which is aware of a pending application before BLM for a special recreation permit should file its protest prior to the grant or denial of the subject permit. In the instant case, protestants were well aware of a pending application for the Parker 400, having previously submitted comments for the environmental assessment record. The early grant or dismissal of such protest is urged upon BLM to assure that a protestant enjoys the full 30-day period to appeal a dismissal of this protest. The language set forth in footnote 2 assumes that the dismissal of any such protest will be contemporaneous with the issuance of the permit. Such permit would be issued subject to any appeal which may be taken to this Board. An analogous procedure has been used by BLM in timber sales. This procedure assures full and fair consideration of a protest and any subsequent appeal while at the same time allowing administrative actions to proceed to their logical conclusion. See, e.g., Elaine Mikels, 41 IBLA 305 (1979). Our concern is that BLM conclude its action with regard to both the permit application and any pending protest sufficiently in advance of the date scheduled for the event to allow for the disposition of an appeal.

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Edward W. Stuebing
Administrative Judge

We concur:

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James L. Burski
Administrative Judge

_____
Bruce R. Harris
Administrative Judge

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